



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2017-0421]

RIN 1625-AA00

Safety Zone; Pacific Ocean, Mamala Bay, Oahu, Hawaii – Hokulea Arrival

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 500 yard safety zone around the sailing canoe HOKULEA for her return to Oahu from a three year worldwide voyage.

HOKULEA is a culturally significant double-hulled sailing canoe modeled after the vessels that brought the first Polynesians to Hawaii. Thousands of people on various types of water craft, including surfboards, canoes, sailing vessels and motor vessels as well as swimmers, have come out to greet HOKULEA when she has returned to port in the past. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential safety hazards associated with the anticipated large number of spectator craft expected to greet the sailing canoe HOKULEA upon her arrival. A moving 500 yard safety zone around the HOKULEA will be in place during her transit, starting when she passes abeam of Makapu'u light house and continuing through Mamala Bay to her mooring in the Ala Wai Harbor. Upon mooring, the moving safety zone will cease but a stationary 500 yard safety zone will be maintained around the HOKULEA until the conclusion of the HOKULEA arrival festivities. Entry of vessels or persons into the

safety zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Honolulu or his designated representative. The Coast Guard will establish a command post at the entrance to the Ala Wai Harbor. This command post will maintain a list of all vessels with authorized moorings in the Ala Wai Harbor that will be allowed to transit the safety zone to depart from or return to these moorings. Vessels not on this list may request to transit the safety zone by contacting the COTP Honolulu or his designated representative.

DATES: This rule is effective from 5:30 AM (HST) on June 17, 2017 through 10 PM (HST) on June 17, 2017.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-USCG-2017-0421 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu at (808) 541-4359 or nicolas.a.jarboe@uscg.mil, respectively.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
TFR	Temporary Final Rule
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to the authority under section 4(a) of the Administrative Procedures Act (APA)

(5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the request for the moving safety zone was received by the Coast Guard on May 10, 2017. Immediate action is needed to prevent possible safety hazards associated with the large amount of vessel traffic expected to greet the sailing canoe HOKULEA in transit and within the small confines of Ala Wai Harbor. It is impracticable to publish an NPRM because we must establish this safety zone by June 17, 2017.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest due to safety hazards associated with the large number of spectator craft expected to greet the sailing canoe HOKULEA when she arrives to Oahu on June 17, 2017.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 1231. The Captain of the Port Honolulu has determined that potential hazards exist from the large number of spectator craft expected to greet the sailing canoe HOKULEA on June 17, 2017. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the 500 yard safety zone while HOKULEA is in transit and moored.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a safety zone from 5:30 AM (HST) on June 17, 2017 through 10PM (HST) on June 17, 2017. This safety zone is located within the COTP zone (See 33 CFR 3.70-10)

and will encompass all waters 500 yards in all directions from the sailing canoe HOKULEA during her transit from Makapu'u light house through Mamala Bay to and including her mooring in Ala Wai Harbor. This safety zone will extend from the surface of the water to the ocean floor and is intended to protect personnel, vessels, and the marine environment within the navigable waters of the safety zone during the transit and mooring of the sailing canoe HOKULEA. No vessel will be permitted to enter the safety zone absent the express authorization of the COTP or his designated representative. Before the effective period, the Coast Guard will issue a broadcast notice to mariners to further notify waterway users of these waterway restrictions. If the safety zone is terminated prior to 10 PM on June 17, 2017, the Coast Guard will also provide a broadcast notice to mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this moving safety zone, which

will only impact small designated areas of Mamala Bay on the Island of Oahu, HI. Once the HOKULEA is moored, authorized vessels will be allowed to transit the Ala Wai Harbor.

Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone. The rule allows vessels to seek permission to enter the safety zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast

Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 1 day that will prohibit entry within 500 yards of the sailing canoe HOKULEA. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T14-0421 to read as follows:

§ 165.T14-0421 Safety Zone; Pacific Ocean, Mamala Bay, Oahu, Hawaii – Hokulea Arrival.

(a) *Location.* This safety zone is located within the COTP zone (See 33 CFR 3.70-10) and will encompass all waters 500 yards in all directions from the sailing canoe HOKULEA during her transit starting when she passes abeam of Makapu'u light house through Mamala Bay to and including her mooring in Ala Wai Harbor. Upon mooring, the moving safety zone will cease but a stationary 500 yard safety zone will be maintained around the HOKULEA through the zone's effective period. This zone extends from the surface of the water to the ocean floor.

(b) *Effective period.* 5:30 AM (HST) on June 17, 2017 through 10 PM (HST) on June 17, 2017. If the safety zone is terminated prior to 10 PM (HST) on June 17, 2017, the Coast Guard will provide notice via broadcast notice to mariners.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.20 apply to the safety zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless expressly authorized by the COTP or his designated representative.

(3) Persons or vessels desiring to transit the moving safety zone identified in paragraph (a)

of this section may contact the COTP of Honolulu through his designated representatives at the Command Center via telephone: (808) 842-2600 and (808) 842-2601; fax: (808) 842-2642; or on VHF channel 16 (156.8 Mhz) to request permission to enter or transit the moving safety zone. If permission is granted, all persons and vessels must comply with the instructions of the COTP Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the moving safety zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the moving safety zone by Federal, State, and local agencies.

(d) *Notice of enforcement.* The COTP Honolulu will provide notice of enforcement of the moving safety zone described in this section by verbal radio broadcasts and written notice to mariners.

(e) *Definitions.* As used in this section, “designated representative” means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the moving safety zone described in paragraph (a) of this section.

Dated: June 2, 2017.

M.C. Long,
Captain, U.S. Coast Guard,
Captain of the Port Honolulu.

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